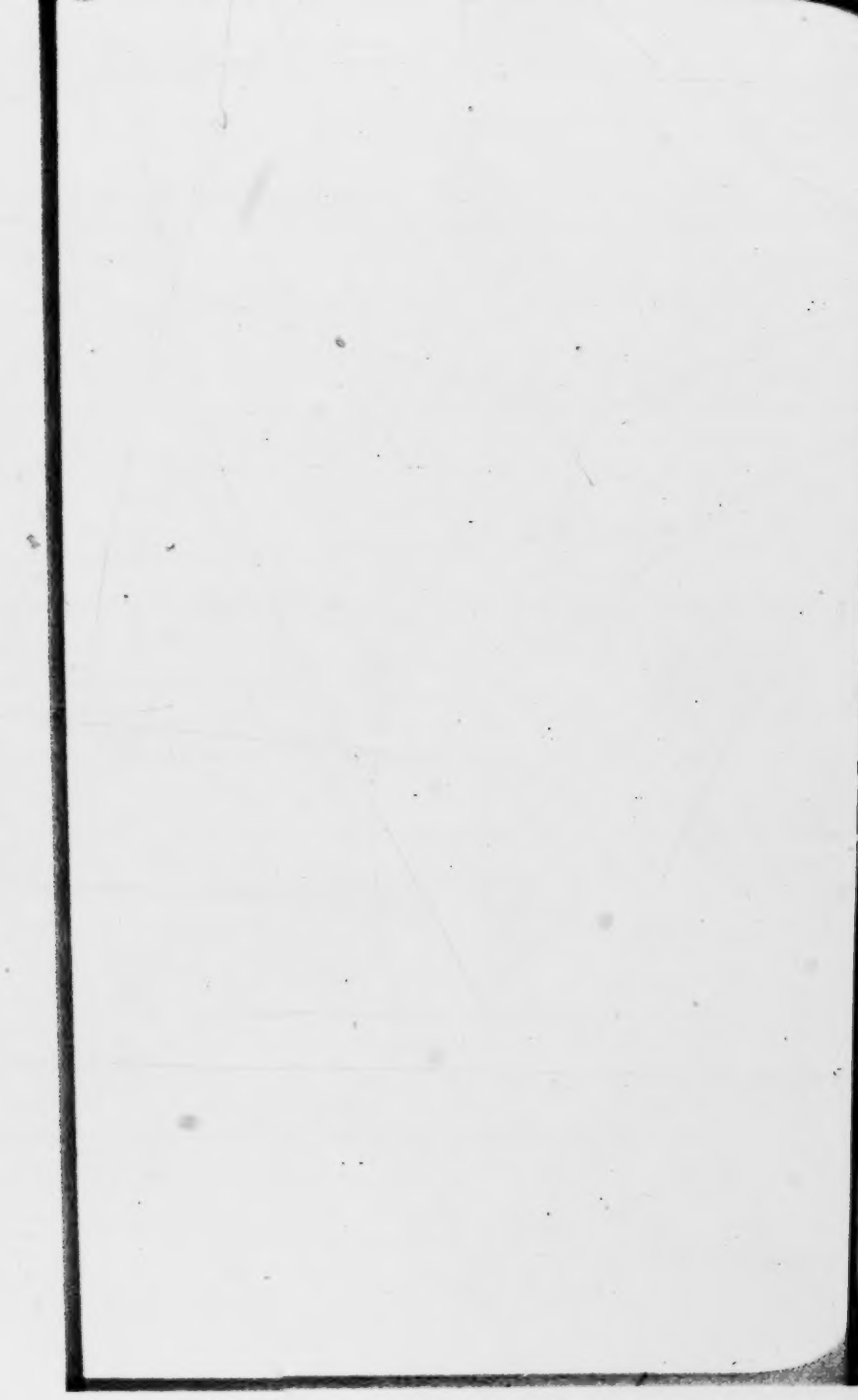


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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 71-1132

RAYMOND MATTZ,

PETITIONER

v.

G. RAYMOND ARNETT, AS DIRECTOR OF  
THE DEPARTMENT OF FISH AND GAME  
OF THE STATE OF CALIFORNIA,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA, FIRST APPELLATE  
DISTRICT

PETITIONER'S SECOND REPLY BRIEF ON THE MERITS

I

INDIAN ALLOTMENTS WERE NOT SUB-  
ORDINATE TO NON-INDIAN HOMESTEADS  
UNDER THE ACT OF JUNE 17, 1892

In support of his claim that the Act of June 17, 1892, was intended to abolish the lower twenty miles of the Hoopa Extension Respondent's Supplementary Brief states (at 8):

"[T]he 1892 act only allowed the Indians to receive trust allotments on surplus lands which were not occupied by the settlers, which is evident from the fact that the act provided that such settled lands were 'exempt' from such allotments. This is contrary to the situation before the Seymour Court, where the Court stressed that the act in question merely allowed settlers to obtain 'surplus' lands which were not used by the Indians.

Respondent's statement is untrue. The 1892 Hoopa Extension Act provided that even a prior good faith settler could not obtain land which an Indian wanted for an allotment if "Indians have resided upon said tract for four months prior to the passage of this act." And, as pointed out in Petitioner's Reply Brief (at page 19, fn.8), Indians must have occupied at least 40 per-

cent of the lower twenty miles of the Extension, for they were allotted nearly 40 percent of the land there.

## II

RESPONDENT HAS MISREAD THE MAPS ON WHICH HE BASES HIS INTERPRETATION OF THE PRESIDENTIAL PROCLAMATION OF MARCH 2, 1909

Respondent rests his interpretation of the 1909 Presidential Proclamation upon a diagonal line on the order's two maps. According to Respondent, that unlabelled line is the oceanward end of the Hoopa Extension because it is in the same location as lines which certain other maps<sup>1</sup> show as the north end of the Extension.

The Proclamation's diagonal line and the other maps' lines are not in the same place, however. The 1909 order's line runs through only section 12 of T. 11 N., R. 2 E. and section 7 of T. 11 N., R. 3 E. (Appendix A to Respondent's Opening Brief.) By contrast, the 1952 Geological Survey Map on which Respondent principally relies (Appen-

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1. Those other maps are Appendices B, C, and D of Respondent's Opening Brief. Petitioner has already explained why those maps are not persuasive on where the reservation ends. (Petitioner's Reply Brief On The Merits at 23.)

dix C to Respondent's Opening Brief) shows the end of the Extension as starting in section 2 of T. 11 N., R. 2 E., running through section 35 of T. 12 N., R. 2 E., and ending in section 36 of T. 12 N., R. 2 E.

Petitioner pointed this out in his Reply Brief, but must reiterate the point in more detail here, because Respondent's Supplementary Brief claims that Petitioner's Reply Brief is in error.

The diagonal line in the 1909 Proclamation was nothing more than the northern limit of isolated tracts being added to the Trinity National Forest from the Hoopa Reservation. Moreover, Executive Order No. 1480 of February 17, 1912, vacated the Presidential Proclamation of March 2, 1909.

### III

#### REPORTS OF THE BIA COMMISSIONER SUPPORT RESERVATION STATUS FOR THE LOWER TWENTY MILES OF THE HOOPA EXTENSION

##### A. The Text Of The Commissioner's Reports Supports Reservation Status.

In 1892 Indians received 161 allotments on the lower twenty miles of the Hoopa Extension. (May 22, 1972, Report of the Commissioner in Jessie Short v. United States,

Ct.Cl. No. 102-63.) The 1893 Report of the Indian Affairs Commissioner described those allotments as "on reservation." (Sixty Second Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior at 23.)<sup>2</sup>

Respondent has not cited one single Commissioner's Report to the contrary.

B. The Maps Affixed To the Commissioner's Reports Show The Lower Twenty Miles Of The Extension As Part Of A Reservation

Petitioner's Reply Brief explained (at 21-22) why the maps in the 1897 and 1898 Commissioner's Reports support reservation status for the lower twenty miles of the Hoopa Extension. Those maps show the Extension running all the way to the Pacific. That is to be contrasted with the maps' treatment of the North Half of the Colville Reservation which Seymour v. Superintendent, 368 U.S. 351, held to have been terminated by an act passed only two

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2. See also 33 L.D. 205 (1904). Contrary to Respondent's Supplementary Brief (at 13), that decision was not by the General Land Office but by the Acting Secretary of the Interior.

weeks after the statute involved in this case. The North Half of Colville is only an outline in 1897 and disappears entirely in 1898.

Respondent's Supplementary Brief says (at 4) that the lower twenty miles of the Extension is uncolored, like Colville's North Half on the 1897 map. Petitioner does not agree. The color is simply difficult to see because the strip is so narrow and runs through a similarly colored band that edges the map. On the copies available to Petitioner, the reservation coloring of the lower twenty is particularly clear in the map annexed to the Commissioner's Report in Annual Reports of the Department of the Interior for the Fiscal Year Ended June 30, 1904. Even clearer is the new style map in Vol. II (Indian Affairs) of Reports of the Department of the Interior for the Fiscal Year Ended June 30, 1907.

In addition--and unlike Colville's North Half--the lower twenty miles of the Extension do not vanish completely from the 1898 map.<sup>3</sup>

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3. Petitioner is also unable to locate on the 1897 or 1898 maps the black line which Respondent's Supplementary Brief (at 4-5) claims is drawn around the lower twenty miles [footnote continued on next page]



C. Hoopa Agents' Reports Attached  
To Commissioners' Reports Are Not  
Authoritative

Respondent's Supplementary Brief (at 2-3) places heavy reliance on three reports by Hoopa Agency Superintendents to the Commissioner of Indian Affairs.

Reports of area superintendents are routinely attached as appendices to the Commissioners' annual reports. Obviously, the Commissioner's Report in 1893 and the maps described above are the documents to be examined to determine the official BIA position. The views of low-ranking, non-legal employees are entitled to little or no weight. (See New Town v. United States, 454 F.2d 121, 123 (8th Cir. 1972).)

IV

THE 1933 HOOPA AGENCY SUPERINTENDENT  
DID NOT CONSIDER THE LOWER TWENTY  
MILES OF THE EXTENSION TERMINATED

On January 12, 1933, the allotting agent at Hoopa wrote a letter concerning who was entitled to allotments on the Hoopa Square. (May 22, 1972, Report of the Commissioner in Jessie Short v. United of the Extension. The only division within the Hoopa Reservation is between the Square and the entire Extension from the Square to the Ocean.

States, supra, at 62, 63.) This long letter, only a minute part of which is reproduced at page 5 of Respondent's Supplementary Brief, concluded that Indians of the entire Extension and of the Square were equally entitled. (Id. at 65.)

In the course of the letter the allotting agent did say that the Act of June 17, 1892, returned unallotted land on the lower twenty miles of the Extension to the public domain (id. at 64); and the Hoopa Agency Superintendent, O. M. Boggess, did "read and approve" the letter (id. at 63). However, it seems fairly clear that Mr. Boggess was only approving the letter's decision on who was to receive allotments. Nothing suggests that Mr. Boggess had changed the position he stated to Congress in September of 1932, less than four months before. Then he said that the Extension ran all the way to the coast and that it and the Square were "all classed by the Indian office as one reservation." (A.14.)

V

A STATEMENT BY THE INDIAN AFFAIRS COMMISSIONER IN 1881 HAS NO BEARING ON THE MEANING OF THE ACT OF JUNE 17, 1892

Respondent's Supplementary Brief

quotes (at 9) the Commissioner of Indian Affairs as saying in 1881 that the lands of the old Klamath River Reservation would not be needed as a reservation if the Indians there were given allotments. From this Respondent infers (at page 10, ¶ 1) that the Commissioner felt the same way in 1892.

That conclusion does not follow. The Commissioner of Indian Affairs was hardly likely to have wanted Congress to abolish in spring 1892 a reservation area (the Hoopa Extension) which the President had created on October 16, 1891.

#### CONCLUSION

This court should reverse the judgment below and hold that the lower twenty miles of the Hoopa Extension are still part of a reservation.

Dated: March 23, 1973

Respectfully submitted,  
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By: \_\_\_\_\_  
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